



# **LABOR STANDARDS**

## **2013 Compliance Workshop**

**Ginny Anderson**

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**334-242-5363**

# Labor Standards

## TOPIC

**Davis-Bacon and Related Acts (DBRA)**

**Applicability Factors – When**

**Applicability Factors – Who**

**Responsibility**

**Types of Construction**

**Handout**

**What's New/What's Old – Additional Classifications**

**Special Topic – Laborers**

**Special Topic – Multiple Wage Decisions**

**Special Topic – Volunteers**

# Davis-Bacon, Copeland, and CWHSSA/FLSA

- Construction laborers and mechanics working on covered projects are paid no less than the Federal prevailing wage rate for the type of work they perform.
- Workers shall be paid weekly; deductions from workers' pay is permissible; contractors must maintain and submit certified weekly payrolls.
- Workers receive overtime (time-and-a-half) for hours worked in excess of 40 hours in a week.

# Applicability Factors - When

- ...construction work over \$2,000
- ...is financed in whole or in part with CDBG funds
- **EXCEPT**... when the **entire project** is strictly demolition

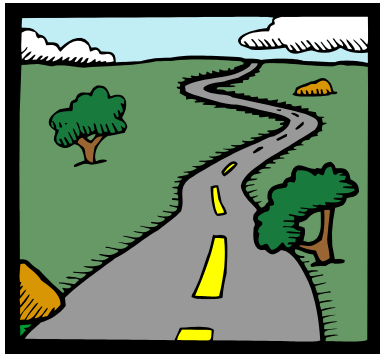
# Applicability Factors - Who

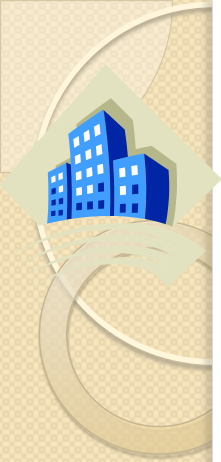
- ...all laborers and mechanics employed by contractors and subcontractors
- ...working on-site

# Responsibility

- **Grantee** – responsible for administration and enforcement of Labor Standard requirements to ensure compliance
- **Prime Contractor** – responsible for full compliance with applicable requirements for not only his/her employees, but for subcontractor's employees as well

# Types of Construction





# Building

- Auditoriums
- Apartment buildings 5 stories and above
- Fire Stations
- Motels
- Museums
- Theaters





# Residential

- Apartment buildings 4 stories or less
- Mobile home developments
- Multifamily houses
- Single family houses
- Townhomes



# Heavy

- Dams
- Drainage projects
- Flood control projects
- Irrigation projects
- Railroad construction
- Outdoor swimming pools



# Highway

- Alleys
- Curbs
- Parking lots
- Runways
- Taxiways
- Other paving work **NOT** incidental to Building or Heavy construction



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# **HANDOUTS**

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
REPORT OF ADDITIONAL CLASSIFICATION AND RATE

HUD FORM 4230A

OMB Approval Number 2501-0011  
(Exp. 09/30/2006)

<b>1. FROM (name and address of requesting agency)</b> GINNY ANDERSON, LABOR RELATIONS SPECIALIST ALA DEPT OF ECONOMIC & COMMUNITY AFFAIRS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM POST OFFICE BOX 5690 MONTGOMERY, AL 36103-5690		<b>2. PROJECT NAME AND NUMBER</b>	
		<b>3. LOCATION OF PROJECT (City, County and State)</b>	
<b>4. BRIEF DESCRIPTION OF PROJECT</b>		<b>5. CHARACTER OF CONSTRUCTION</b> <input type="checkbox"/> Building <input type="checkbox"/> Residential <input type="checkbox"/> Heavy <input type="checkbox"/> Other (specify) <input type="checkbox"/> Highway	
<b>6. WAGE DECISION NO. (include modification number, if any)</b> <input type="checkbox"/> COPY ATTACHED		<b>7. WAGE DECISION EFFECTIVE DATE</b>	
<b>8. WORK CLASSIFICATION(S)</b>		<b>HOURLY WAGE RATES</b>	
		<b>BASIC WAGE</b>	<b>FRINGE BENEFIT(S) (if any)</b>
<b>9. PRIME CONTRACTOR (name, address)</b>		<b>10. SUBCONTRACTOR/EMPLOYER, IF APPLICABLE (name, address)</b>	
<b>Check All That Apply:</b> <input type="checkbox"/> The work to be performed by the additional classification(s) is not performed by a classification in the applicable wage decision. <input type="checkbox"/> The proposed classification is utilized in the area by the construction industry. <input type="checkbox"/> The proposed wage rate(s), including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage decision. <input type="checkbox"/> The interested parties, including the employees or their authorized representatives, agree on the classification(s) and wage rate(s). <input type="checkbox"/> Supporting documentation attached, including applicable wage decision.			
<b>Check One:</b> <input type="checkbox"/> Approved, meets all criteria. DOL confirmation requested. <input type="checkbox"/> One or more classifications fail to meet all criteria as explained in agency referral. DOL decision requested.			
_____ Agency Representative GINNY ANDERSON		_____ Date  334-242-5363 Phone Number	
		FOR HUD USE ONLY LR2000:  Log in:  Log out:	

U.S. Department of Labor

Wage and Hour Division  
Washington, D.C. 20210



MAR 23 2013

MEMORANDUM NO. 213

TO: ALL CONTRACTING AGENCIES OF THE FEDERAL  
GOVERNMENT AND THE DISTRICT OF COLUMBIA

FROM: *Mary Beth Maxwell*  
MARY BETH MAXWELL  
Acting Deputy Administrator

SUBJECT: Application of the Davis-Bacon and Related Acts requirement that wage rates for additional classifications, when "conformed" to an existing wage determination, bear a "reasonable relationship" to the wage rates in that wage determination

This Memorandum is notification from the Department of Labor's Wage and Hour Division (WHD) of the proper application of the Davis-Bacon and Related Acts (DBRA) requirements for wage rates for additional classifications that are "conformed" to an existing wage determination by agency contracting officers. The regulations at 29 C.F.R. § 5.5(a)(1)(ii)(A) provide that contracting officers shall approve an additional classification and its proposed wage rate in conformance with an existing wage determination only when the work to be performed by the proposed classification is not performed by a classification in the wage determination and the proposed wage rate bears a "reasonable relationship" to the wages rates in the wage determination. Although this Memorandum primarily focuses on the "reasonable relationship" requirement, it is essential at the threshold to reiterate that a conformance is not appropriate when the work of the proposed classification is already performed by a classification on the wage determination. The conformance process is narrow in scope and has the limited purpose of establishing a new classification when it is necessary to do so because work needed to perform the contract is not performed by an existing classification. *See Cambridge Plaza*, ARB Case No. 07-102 (ARB Oct. 29, 2009). Accordingly, the WHD will not add a new classification through a conformance action unless the first criterion for issuance of a conformance is satisfied, i.e., the proposed work in question is not performed by any classification in the existing wage determination. 29 C.F.R. § 5.5(a)(1)(ii)(A)(1).

In those circumstances in which the duties of the proposed classification are not performed by any classification in the existing wage determination, the WHD will consider whether the proposed wage rate bears a "reasonable relationship" to the wage rates in the wage determination. In the past, WHD has generally approved proposed wage rates for a conformed skilled craft and a power equipment operator when such rates were not less than the rate for the lowest classification in the respective category on the contract wage determination. The practice of using the lowest rate in the relevant category as a benchmark also occurred on occasion with laborers and truck drivers. In keeping with the remedial purpose of the DBRA and the governing

## THE DAVIS-BACON ACT PROTECTING WAGE EQUALITY SINCE 1931

Since its enactment in 1931, the Davis-Bacon Act (DBA) has provided critical wage protections for construction workers and has guaranteed a level playing field for construction contractors bidding on federal projects.

The federal government constructs buildings, builds dams, and funds housing projects. State highway departments pave roads with federal funds from the Federal Highway Administration. Local and state governments build water treatment plants, modernize schools, and renovate airports with the support of federal funds.

The DBA ensures that construction workers on federal or federally assisted construction projects will not see their wages and benefits undercut by government spending practices. The DBA exists to prevent the infusion of federal dollars into local communities from depressing local wages. DBA provides a wage floor that protects construction workers' pay, and sets a level playing field for contractors who are bidding on federally funded projects. As important, these standards enable local contractors and their employees to compete for local projects by protecting against under-bidding by contractors from other areas who might import workers or offer the same jobs for less pay.

### CONFORMANCES

The Department of Labor's Wage and Hour Division (WHD) determines locally prevailing wage and fringe benefit rates through the conduct of wage surveys on government contracts covered by the Davis-Bacon Act. Published wage determinations for each county in the country list the wages and benefits that have been found to be prevailing for each classification of worker for which there is sufficient wage payment data.

Data collection for these surveys is dependent upon the voluntary submission of information from contractors and third parties that have performed construction work within the geographic scope of the wage survey. At times, the survey collection efforts will not yield sufficient data to establish a rate for every existing classification of work. When this happens, WHD cannot establish a rate for that job classification on the wage determination.

When a contractor performs work on a DBA-covered contract and the applicable wage determination does not provide a rate for a classification of work to be performed, the needed classification and wage rate must be added *in conformance* to the contract wage determination. This is the conformance process.

Accurate and current wage rates are the cornerstone of the DBA's protections, and provide the framework around which prevailing wage requirements protect contractors, employees, and local economies. The Wage and Hour Division has been working to



# Special Topic - Laborers

A Laborer may:

- Pour concrete
- Dig holes and trenches
- Rake asphalt
- Carry materials
- Hand tools to a journeyman
- Use brooms, shovels, and rakes to clean





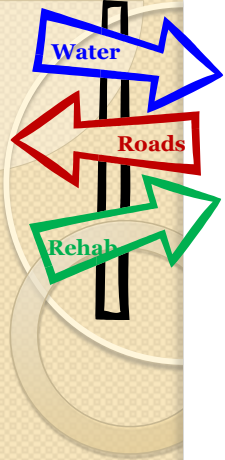
Unless so designated in the wage rate, a Laborer **may not** use any of the following tools:

- \* Trowels
- \* Levels
- \* Cutting knives
- \* Hammers
- \* Wrenches, etc.
- \* Wirecutters
- \* Putty knives
- \* Knee kickers
- \* Tape measures
- \* Hand saws
- \* Power saws
- \* Screw drivers
- \* Air tools
- \* Power tools
- \* Floor rollers
- \* Snips
- \* Pliers



Any laborer using tools to perform work in a specific trade must be paid not less than the journeyman's wage rate as indicated on the wage determination. A good rule of thumb... do not allow laborers to utilize the tools of a trade unless they are paid for the time in which they use such tools (split classification).

If a laborer is observed performing such work with tools listed above and/or other tools not allowed, the Contractor will be required to pay back wages (restitution) for the total number of hours worked on the job site.



# Special Topic – Multiple Wage Decisions

- Any line item/construction category greater than or equal to \$1,000,000 automatically gets its own wage decision.
- 20% is the magic number for determining whether or not an additional wage decision may be needed.
- When a construction line item is more than 20% of the project, multiple wage rates may apply.
- Use the TOTAL projected (actual, if known) cost for the project including ALL funding sources to determine the 20%.



➤ If one contractor has more than one contract, the contractor has to either:

➤ Pay the higher of the 2 wage decisions (when one classification appears on both wage decisions)  
OR

➤ Keep detailed records when an employee is performing work on each separate job

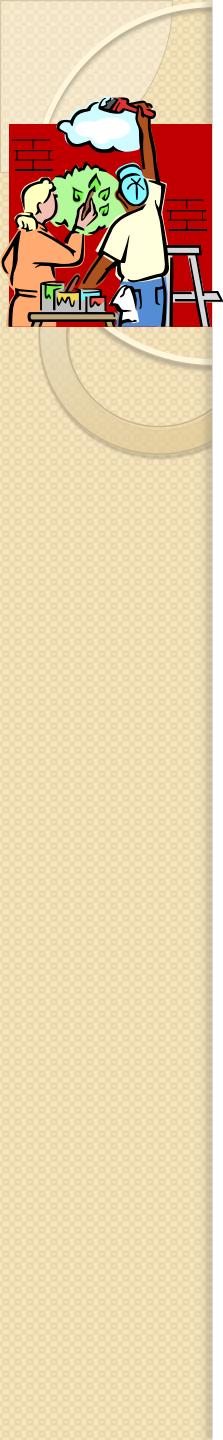


# Special Topic - Volunteers

A. IF volunteers will receive “expenses, reasonable benefits, or nominal fees”, the grantee must submit a letter to HUD in which the “expenses, reasonable benefits, or nominal fees” are outlined/discussed/listed. HUD then will make a determination as to whether or not the “expenses, reasonable benefits, or nominal fees” are satisfactory (i.e., low/less than regular wages).



- B. Where the work is to be performed by a mix of paid workers (i.e., Contractor's employees) and volunteers, the names of the volunteers **must** appear on the Contractor's certified payroll. The Contractor must:
- a. Record the Names of all volunteers working during the pay period in question.
  - b. IF volunteer labor is to be used/counted as IN-KIND MATCH, record the appropriate Classification for the work the volunteer is performing.
    - i. The Classification must come from the wage decision being used on the project for the Contractor's employees.
    - ii. If the proposed Classification for the volunteer labor does not appear on the wage decision, request an Additional Classification.

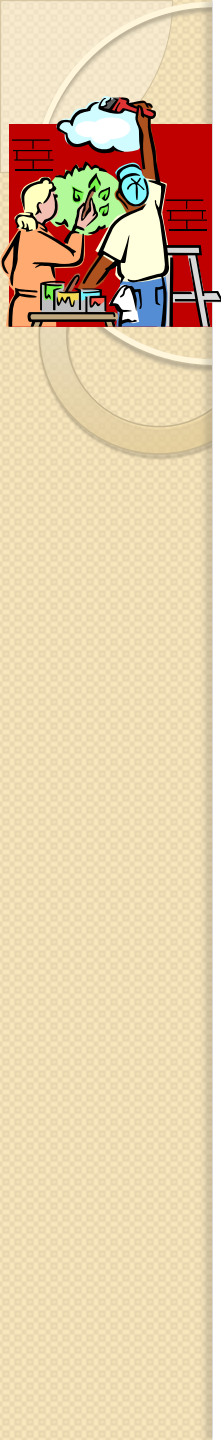


- c. Record the Day, Date, and Hours the volunteer worked each day during the pay period. Record Straight-time and Overtime as applicable.
- d. Record the Total Hours the volunteer worked during the pay period.
- e. IF volunteer labor is to be used/counted as IN-KIND MATCH, record the Rate of Pay for the volunteer's classification.
- f. IF volunteer labor is to be used/counted as IN-KIND MATCH, calculate the Gross Amount. This figure is used to calculate the total dollar amount to be applied to the IN-KIND MATCH.
- g. Under Deductions and Net Wage Paid, write in **VOLUNTEER** for the volunteers.

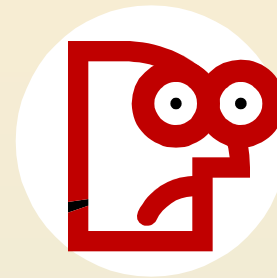
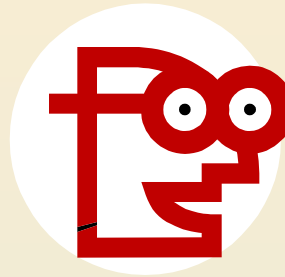
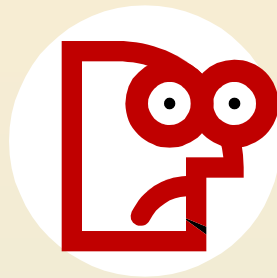


C. In those instances where volunteers are on the job site but the Contractor is not (i.e., after hours or weekends), the volunteer coordinator must record the date, names of volunteers, hours worked, and type of work performed by each volunteer. The volunteer coordinator must then certify the document as accurate. This document shall be forwarded to the Contractor for inclusion on the certified payroll.





- D. In addition to the information above, the following information must be kept in the project file:
- a. Name and Address of the Agency  
Sponsoring the Project **(State of Alabama - CDBG)**
  - b. Description of the project, to include:
    - i. Location
    - ii. Cost **(The Overall Cost of the project)**
    - iii. Nature of Work **(The Work of the Volunteers)**
  - c. Numbers of Volunteers and Hours of Work Performed
  - d. Names of all Volunteers



**It's QUESTION TIME !!**